

MEMO ENDORSED



Fox Rothschild LLP
ATTORNEYS AT LAW

101 Park Avenue, 17th Floor
New York, NY 10178
Tel (212) 878-7900 Fax (212) 692-0940
www.foxrothschild.com

ERNEST EDWARD BADWAY
Direct No: 212.878.7986
Email: EBadway@FoxRothschild.com

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March 29, 2022

VIA ECF

The Honorable Andrew L. Carter, Jr., U.S.D.J.
United States District Judge
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

**Re: *United States of America v. Valeria Ruth HaCohen*,
Case No. 1:20-cr-00648-ALC**

Dear Judge Carter:

We represent defendant Valeria Ruth HaCohen in the above-referenced matter. We write to inform the Court of an urgent medical situation concerning Ms. HaCohen, and respectfully request a bail modification granting permission for Ms. HaCohen to travel to Israel for pre-operative testing, surgery, and recuperation with her family who can care for her. Essentially, we are asking that this Court modify Ms. HaCohen's bail restrictions so as to allow her to travel to, remain in, and then return from Israel during the period April 4, 2022 through June 10, 2022.

Ms. HaCohen's Medical Background

Ms. HaCohen has been experiencing severe pain, discomfort, and internal bleeding for the last three years due to several large fibroids in her uterus.

Unfortunately, she has recently learned that the fibroids have grown in size, causing her to experience substantial bleeding. The significant loss of blood experienced by Ms. HaCohen has also caused her to become severely anemic with dangerously low iron reserves. As a result, she has received multiple blood and iron infusions in recent months. Further, due to a family history of cancer, this diagnosis is of particular concern and may be a life-threatening condition. We provide a copy of Ms. HaCohen's medical file as Exhibit 1, and a letter from Ms. HaCohen's

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American doctor, Dr. Barcia, as Exhibit 2, who indicates the necessity and urgency of this surgery.

Ms. HaCohen has, thus, been advised by her doctors that she needs an emergency hysterectomy, requiring at least four weeks of postoperative recovery. We attach a copy of the letter from Ms. HaCohen's Israeli physician, dated February 20, 2022, as Exhibit 3.

Ms. HaCohen's Proposed Surgery and Recuperation Period

As indicated above, Ms. HaCohen will need time to recuperate after her surgery, and she will only have assistance if the surgery occurs in Israel where her family can assist with her recovery. Moreover, as detailed below, the Covid-19 restrictions in place in Israel are different than in the United States, and those quarantine procedures will have an effect on both travel and timing.

Initially, we annex a copy of the letter in Hebrew from Ms. HaCohen's Israeli doctor and a copy of its English translation, dated March 16, 2022, as Exhibits 4 and 5, respectively. Ms. HaCohen's Israeli doctor scheduled Ms. HaCohen's pre-operative testing, surgery, and follow up care. Ms. HaCohen's surgery has been tentatively scheduled for April 28, 2022. However, Ms. HaCohen must come to the hospital the day before, April 27, 2022, to see her doctor with all the pre-operative tests required by the doctor completed. The tests are usually taken at least 3 to 4 days prior to the surgery to ensure there are no problems and re-testing can occur if there are unusual results.

For this to be accomplished, Ms. HaCohen must, therefore, arrive in Israel 5-7 days prior to any pre-operative testing because the Israel Covid-19 orders require this type of quarantine period (provided Ms. HaCohen also has 2 negative Covid tests, or the quarantine period could be longer). Although Ms. HaCohen has had her Covid shots and a booster, Israel does not recognize the 3rd shot because it was done in America. As such, she is subject to the above additional quarantine requirement. Hence, Ms. HaCohen must arrive at least 7 days prior to when she takes the pre-operative tests.

There is an additional practical calendar problem effecting the scheduling of these tests. That is, the Jewish holiday of Passover begins on April 15, 2022, much of Israel is closed and Ms. HaCohen will be unable to obtain the required medical tests until April 24, 2022. Passover 2022 begins in the evening of Friday, April 15, 2022, and ends in the evening of Saturday, April 23, 2022.

Given the quarantine restrictions, the medical testing requirements, and Passover, Ms. HaCohen would have little time to obtain the required testing. That is the reason for this request to allow Ms. HaCohen to travel before the holiday, obtain the testing, and provide for any issues resulting from any problems with the testing.

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Additionally, the recovery time for a hysterectomy is usually 6 to 8 weeks. *See* <https://www.webmd.com/women/guide/hysterectomy-recovery#:~:text=Most%20women%20go%20home%202,for%20the%20first%20two%20weeks>. Ms. HaCohen will not be able to travel after the surgery, do any heavy lifting, or other work during this recovery time. Her physician has scheduled a follow up appointment for June 6, 2022. During this period of time from the surgery until at least June 6, 2022, Ms. HaCohen will have to rely upon and require care from her family in Israel. She has no family or support network in America to provide such care.

In sum, we are requesting this Court permit Ms. HaCohen to leave America sometime during the week of April 4, 2022 (depending upon airline flights), solely to ensure adequate time for testing and re-testing if necessary so the surgery will not be delayed. Further, we ask for her to remain in Israel for the recuperation period as well. If there are no complications, the surgery will take place on April 28, 2022, and Ms. HaCohen will be in the hospital for 3 to 4 days provided there are no complications. She will then stay in Israel, and follow up with the doctor on June 6, 2022. It is at that time or shortly thereafter we believe – barring complications—she will be able to return to America.

Ms. HaCohen's Insurance Situation

Although Ms. HaCohen needs the surgery to occur in Israel for care concerns, she also requires the Israeli surgery because her American insurance will not cover it.

Ms. HaCohen has a policy with DavidShield that she purchased approximately one year ago. We attach the policy and her health insurance card for your review as well as her Israeli health insurance card, as Exhibits 6, 7, and 8, respectively. This policy has an exclusion for pre-existing conditions, and, since Ms. HaCohen has been suffering with this condition for the past 3 years, DavidShield will not cover the current treatment. Consequently, Ms. HaCohen has been paying out of pocket for her iron deficiency treatments because it is considered a pre-existing condition. We attach for your review a copy of the underwriting decision denying the iron deficiency treatments as Exhibit 9, and we note that this decision took over a month to be sent to Ms. HaCohen.

On March 28, 2022, we received an adverse underwriting decision from DavidShield denying Ms. HaCohen's pre-authorization request for the total abdominal hysterectomy, attached as Exhibit 10. The denial letter states that the claims department determined that the procedure is not covered. Although the specific basis for the denial is not spelled out in the letter, we have been told that the Number 5 subsection in Exhibit 9, "5. existing or new benign or malignant Polyps of uterus, including laparoscopy, colposcopy, removal of Polyps, medications, complications and invasive procedures," would be basis for the denial of this surgery. Although we recognize that the DavidShield policy Chapter 4.2.4 seems to address pre-existing conditions, leaving the potential for coverage of pre-existing conditions if the insured had given prior notice and a decision is made at the inception of the insurance policy as reflected on an accompanying schedule, that is not the case here. There is no such schedule indicating an exclusion, and as

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shown in her medical history, Ms. HaCohen had previously been diagnosed with polyps in 2019. See Exhibit 1, p. 2. Moreover, this is consistent with the denial letter as received, and any further delay of this necessary surgery would potentially complicate Ms. HaCohen's health.

If Ms. Hacohen can have the surgery in Israel, she will only have to pay an expedited fee of approximately \$500 for the surgery, and it will be done by the end of April 2022. By the way, this fee is only required because she needs the surgery urgently, and it will take place at a private facility.

The Government's Position

For several weeks, we have been in discussions with the Government regarding this bail modification request. We note that the Government has been very receptive and understanding of this request. We have provided the Government with all of the documents we are now providing this Court, including, but not limited to, Exhibit 10, provided to the Government yesterday. The Government, however, informed us of its position last week, and told us the Government would oppose this request because it was unsure if coverage for the surgery would be denied.

We understand that the Government has to review the denial, but we could not wait any longer given the timing required to make the surgery in Israel. As such, we are now submitting this bail modification request, and indicating the Government's position as being opposed to it.

Conclusion

In light of these developments, we request a bail modification from this Court so that Ms. HaCohen may travel to Israel for the pre-operative testing, surgery, and recuperation from April 4, 2022 through June 10, 2022. In Israel, Ms. HaCohen will be able to utilize her trusted physicians, and the procedure and attendant care will be nearly fully covered by insurance in Israel. Further, since she will not be able to care for herself and she has no family in America, she will have the support of her family during these difficult times, and to care for her during her recuperation.

We are most grateful for the Court's consideration of this request, and are available to answer any questions or discuss this matter with the Court in further detail.

Respectfully submitted,

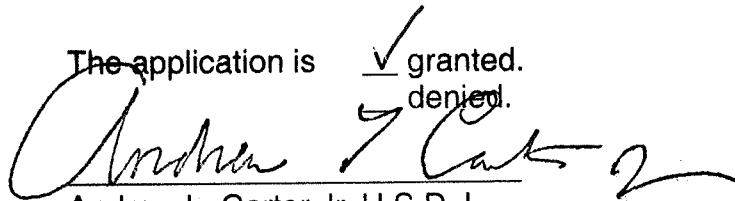
/s/ Ernest Edward Badway
Ernest Edward Badway

Enclosure(s)

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cc: Michael D. Lockard, Esq. (via ECF)
Matthew J.C. Hellman, Esq. (via ECF)

The application is ☒ granted.
~~denied.~~

A handwritten signature in black ink, appearing to read "Andrew L. Carter Jr.", is written over the printed name and date.

Andrew L. Carter Jr, U.S.D.J.

Dated: April 4, 2022
NY, New York